

REMARKS / ARGUMENTS

A restriction requirement has been asserted between Group I and Group II of the claims. Applicant provisionally elects Group II incorporating claims 16-69. That election is made with traverse.

Section 121 of the Patent Statute authorizes a requirement for a restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of Group I and the invention defined by the claims of Group II may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirement in definite terms. The construction adopted by the Manual of Patenting Examining Procedure assumes that the Statute authorizes restriction between inventions which are not independent and distinct but which are either independent or distinct. It is applicant's position that the plain meaning of the Statute defies such construction. For this reason, applicant requests that the restriction requirement be withdrawn so that all the claims may be prosecuted as a single invention.

The MPEP [is] commonly relied upon as a guide to patent attorneys and patent examiners on procedural matter." *Litton Sys., Inc. v Whirlpool Corp.*, 728 F.2d 1423, 1439, 221 USPQ 97, 107 (Fed. Cir. 1984). While the MPEP does not have the force of law, it is entitled to judicial notice as an official interpretation of statutes or regulations as long as it is not in conflict therewith. *Id.* at 1439, 221 USPQ at 107.

Molins PLC v. Textron Inc, 48 F 3rd 1172, 1180, n. 10, 33 USPQ 2d 1823 (CAFC 1995). Emphasis added.

The Applicants have been directed under 35 U.S.C. §121 to elect one of 13 disclosed species for prosecution on the merits. Applicants provisionally elect species (1) embodied in Figures 1-3. Applicants respectfully traverse said species election requirement, and draw the Examiner's attention to a comparison of Figure 4 and Figure 1, in that Figure 4 is another view of the apparatus shown in Figure 1. In addition, Figure 5 is a cross section of the apparatus of Figure 4. Figures 10-20 show different embodiments of the features claimed in claims 16-20, for instance. Applicants contend that claim 16 is in fact drawn to generic embodiments of a fluid transfer channel.

Typographical errors in the specification have been corrected by preliminary amendment.

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Preliminary Amendment and Response dated February 17, 2005
Reply to Office Action of January 21, 2005

Respectfully submitted,

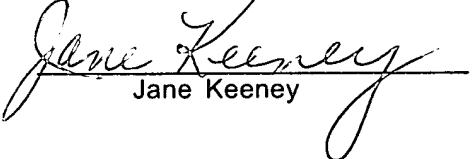
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